

The Highland Council

Audit and Scrutiny Committee – 20th November 2014

Agenda Item	4
Report No	AS/26/14

Nairn Common Good Fund - Parkdean Caravan Park Lease

Report by Head of Audit & Risk Management

Summary

This report refers to a management report requested by the Chief Executive and prepared by the Head of Audit & Risk Management, concerning the Parkdean Caravan Park lease.

1. Introduction

- 1.1 At its meeting on 30th October 2014, the Council considered a report by the Director of Finance concerning the restitution of rental income at Lochloy Caravan Park, Nairn, presently leased by Parkdean Limited. The report made reference to an investigation by the Head of Audit & Risk Management which had been instigated by the Chief Executive in order to establish how the Council had failed to apply successive rent increases since 1992. Members were informed that the Head of Audit & Risk Management's report had concluded that there were a number of failings with regard to the proper record keeping and administration over the period concerned.

2. Report by Head of Audit & Risk Management

- 2.1 The management report prepared by the Head of Audit & Risk Management is attached at appendix 1 in order that Members are aware of the report findings. This has been prepared for this Committee as follows:
- (i) The report is the full report issued to the Chief Executive on 25th July 2014 but with the job titles of all officers redacted.
 - (ii) The reason for the redaction is that the report has not followed the same process as that used for issuing routine internal audit reports. For such reports, these are issued in draft form, enabling the officers named (*nb, named by their job titles*) to provide an opportunity to respond, sometimes challenging the findings or offering mitigating circumstances.
 - (iii) Many of the officers referred to in the report have left the Council's employment. Although some officers remain in the Council's employment, none have been given the opportunity, within the report, to offer any explanations for their actions or inactions or to clarify the various issues raised.
- 2.2 In view of the issues raised within the report, the Chief Executive has requested the Head of People & Performance and the Head of Corporate Governance to consider whether any disciplinary action or other action is appropriate.

3. Implications

- 3.1 There are no resource, risk, legal; equalities; climate change/carbon clever, rural and Gaelic implications as a direct result of this report.

Recommendation

Members are asked to consider and note the findings of the management report concerning the Parkdean Caravan Park lease.

Designation: Head of Audit & Risk Management

Date: 11th November 2014

Author: Nigel Rose, Head of Audit & Risk Management



CONFIDENTIAL

INTERNAL AUDIT – MANAGEMENT REPORT

NAIRN COMMON GOOD FUND - PARKDEAN CARAVAN PARK LEASE

AUTHOR

Nigel Rose
Head of Internal Audit & Risk Management
Internal Audit
Finance Service
Headquarters
INVERNESS
IV3 5NX

DISTRIBUTION

Chief Executive

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1. INTRODUCTION

- 1.1 This review was undertaken following discussion at a meeting on 7th July 2014 between the Director of Finance, Acting Head of Community & Democratic Engagement and the Audit & Risk Manager. The meeting was in response to an issue regarding the failure to implement rent increases, referred to within a joint report submitted by the Director of Finance and the Acting Head of Community and Democratic Engagement to the Nairn and Badenoch & Strathspey Committee of 11th June 2014. This was reported as follows:

"An issue with the lease review process for the caravan site at Lochloy (Note: the tenant is "Parkdean Holidays") has been identified. The original lease agreement was for 60 years w.e.f. 01/11/1985. In 1992, in accordance with the rent review provisions in the lease, the rent was reviewed in line with the Retail Price Index (RPI). (The lease was extended on 1st November 1994 for a further period of 99 years). The rent should have been reviewed 7 yearly thereafter on 31 October 1999 and 31 October 2006."

With reference to the above, the report gave assurance that *"management systems are being reviewed and revised with immediate effect to ensure improved governance measures are put in place."*

- 1.2 The Acting Head of Community & Democratic Engagement stated that he had met with the Chief Executive earlier that day who had asked that Internal Audit review the matter in order that the results of this could feed into a report to the next Area Committee meeting on 25th September 2014. The nature of the review was set out later that day in an e-mail from the Acting Head of Community & Democratic Engagement to the Audit & Risk Manager, copied to the Chief Executive. This is provided as follows:

"Internal Audit should establish:

- (i) The status of the documents, copies of which were handed to you today (Note: these had been provided earlier by the Nairn Ward Manager), evidencing the decision making process relating to the management of the Parkdean Caravan Park Lease.*
- (ii) Any resultant liability and where that falls.*
- (iii) In the event that liability is found, confirmation that it would be competent for the sum assessed as being the "loss" to be "paid" to the Nairn Common Good Fund."*

- 1.3 The meeting also clarified the following matters:
- The failure to apply previous rent increases came to light in September 2013 when the previous Nairn Ward Manager identified that a rent review was due.
 - Legal advice had been provided which stated that the missed rent increases due in 1999 and 2006 could not be pursued.
 - A rental increase was to be applied from 31st October 2013, thus ensuring that the current rent accords with the terms of the lease.
 - The effect of the failure to review the rent in accordance with the lease provisions had resulted in a total loss of rent to the Nairn Common Good Fund of £147,301. Interest due on that figure has been calculated as £39,759 providing a total loss of £187,060.
- 1.4 On 11th July 2014, three further files were presented to the Head of Internal Audit & Risk Management by the Nairn Ward Manager as these were considered to be of relevance for the review. These files provided considerably more information than the earlier files and better evidenced the decision making process.
- 1.5 This report is based upon the information available within the files presented and also from the minutes and agendas available on the Council web-site and through the archives. Also considered within this report are Internal Audit reports of the Common Good Fund as a whole which were prepared in 2008 and 2011.

2. CHRONOLOGY

The undernoted table provides a chronology of some of the key events which should have acted as trigger points to consider the terms of the lease in more depth. The table also highlights the dates on which rent reviews were due and also lists some of the key changes that took place during the period concerned.

Date	Event	Report Ref
Oct 1976	Lease agreement between Nairn District Council and Scotia Caravans Ltd for 21 years with annual rent reviews	3.1.1
Nov 1985	Lease agreement between Nairn District Council and Scotia Caravans Ltd for 60 years with rent reviews every 7 years	3.1.1
Nov 1992	Rent reviewed in accordance with the lease terms	
Nov 1994	Lease assigned to Parkdean Holidays Ltd and extended for a period of 99 years	3.1.2
Apr 1996	Local Government Reorganisation	3.8.1
Jan 1998	Decision taken to credit caravan park income to the Common Good Fund	3.2.1
Nov 1999	Failure to review rent in accordance with the lease terms	
Feb 2001 - Oct 2001	Proposed amendment to the lease/ meeting with Parkdean Holidays Ltd	3.3.1/ 3.3.2
Oct 2002	Restructuring of Finance Service	3.8.1
Nov 2003	Concerns expressed by Corporate Services that rent reviews may not have been undertaken in accordance with leases	3.6.1
Apr 2004	Reminder issued by Corporate Services that leases needed to be reviewed	3.6.2
Oct 2005	Asset register drafted which failed to highlight the provision for 7-yearly rent reviews	3.6.6/ 3.6.7
Jan 2006	Review of lease agreements but caravan park omitted	3.6.8
Aug 2006	Request from Member at Nairnshire Committee for detail regarding Common Good Fund income	3.5.2
Nov 2006	Failure to review rent in accordance with the lease terms	
Apr 2007	Area Committees dissolved	3.8.1
May 2008	Internal Audit report on Common Good Funds highlighting the concern that Funds may not be benefiting from potential income due. Agreed that schedule of income to be prepared, including information on when rent reviews are due	3.7.1
June 2009	Progress against the Internal Audit report presented to Resources Committee. Request for further report showing how action points were being progressed	3.7.2
Dec 2009	Further report to Resources Committee but no reference made to the completion of a schedule of income	3.7.4
Nov 2011	Internal Audit follow up report on Common Good Funds showing that the schedule of income, agreed in May 2008, had not been completed	3.7.6

3. KEY FINDINGS

3.1 Terms of lease

3.1.1 The original lease agreement, dated October 1976, was in place between Nairn District Council and Scotia Caravans Ltd for a 21 year period to 31st October 1997. This lease provided for annual rent reviews, on 31st October, index linked to the Retail Price Index. The rental was payable in two half-yearly equal instalments.

A further lease agreement, dated November 1985, was entered into between the two parties for 60 years from 1st November 1985 to 31st October 2045. The principal amendments from the original lease were as follows:

- Provision was made for rent reviews every 7 years in accordance with the Retail Price Index.
- Pedestrian and vehicular access to the East Beach was defined in greater detail.
- The permitted number of caravans (394) remained the same. However, whilst the lease previously stipulated 294 static stances and 100 touring stances, the revised lease provided for a "reasonable provision" for static stances.

3.1.2 Two further amendments were made to the lease prior to Local Government Reorganisation in 1996, as follows:

- In October 1989 the tenants were given the entitlement to operate the site throughout the whole year, with the exception of November, though recognising that the normal operating season extended from March to October. The previous lease did not exclude the month of November.
- In November 1994 the lease was assigned to Parkdean Holidays Limited and was extended for a further period of 99 years.

Comment

Unfortunately, there is no documentation available to explain the decision behind the move from annual rent reviews to reviews every 7 years. However, it was a decision which created an administrative burden in view of the fact that a manual debtors system was in place at that time with no ability to effectively diarise future reviews, which is now possible in an automated system. Instead the system has relied on the maintenance of accurate paper-based records over a long period of time. Although the first review, which was due in 1992 took place, the decision to implement 7-yearly reviews is seen as a critical contribution towards the failure to implement the subsequent reviews as provided for within the lease.

3.2 Decision of 1998 to credit the income to the Common Good Fund

3.2.1 In January 1998 the [REDACTED] submitted a report to the Nairnshire Committee which the report summary shows was requested by Members in order to "examine a number of areas in relation to the Common Good Fund with a view to proceeding to a more managed approach." Extracts from this report are provided as follows:

- "Prior to 1990, the former District Council agreed to direct the income from the lease of the Caravan Park to the Cultural & Leisure Services Account as opposed to the Common Good Account. Separately, in 1995, the District Council agreed not to levy a charge on the Common Good Fund for maintenance of The Links."
- "The above decisions were taken independently of each other and were largely rate fund driven. It is not the case that the Caravan Park income was directed to Cultural & Leisure Services in return for ground maintenance work although in practice this is the case."
- "The current income from the caravan park rental is £33,700 per year. Ground maintenance costs are of a similar order. If the caravan rental was diverted to the Common Good this should be enough to cover the ground maintenance costs."

On the basis of the above and as outlined in one of the report's recommendations, Members agreed that, in future, the caravan park rental would be credited to the Common Good Fund.

In tandem with the above report, Members were asked to consider the draft income and expenditure account for the Common Good Fund which showed an actual deficit of £2,777 in respect of 1996/97 and a projected deficit of £2,011 in respect of 1997/98.

Comment

- Although it was suggested that the ground maintenance costs of maintaining The Links were of a similar order to the caravan park rental, subsequent Common Good Accounts show that those costs were lower. For example, the accounts for 1999/2000 and 2000/2001 showed costs of £28,700 and £29,827 respectively in comparison with the above quoted rental figure of £33,700.
- The request from Members to closely examine the Common Good Fund finances, including the caravan park specifically, should have prompted the terms of the lease to be considered, particularly in terms of its significance. (Note: This is demonstrated by the draft income and expenditure accounts for 1997/98 which were considered at the same time as the rental income proposal which showed that the total of all other income, including that raised through the various leisure park activities, totalled just £24,852). An examination of the lease at that time would have indicated that a rental increase was due the following year, in 1999, which could have had a significant bearing on future Common Good Accounts.
- The decision by Members should have provided for closer scrutiny from 1998 onwards as the caravan park income became much more transparent in terms of being included within a relatively small Common Good Fund rather than being included within the Council's income accounts.

3.3 Proposed amendments to the lease, 2001

3.3.1 At the Members Informal Meeting on 19th February 2001 there is reference to *"agreement in principle to approve the assignation of lease in favour of Premier Dawn Limited, the prospective purchasers of the tenants' interest in the caravan park."* The minutes show that the matter was delegated to the [REDACTED] in consultation with the [REDACTED]. This issue was then discussed at the subsequent Nairnshire Committee meeting on 6th March 2001 where it was reported that *"in view of the urgency in concluding matters the Trustees had agreed in principle to the assignation subject to appropriate officers being satisfied with the terms thereof."* On that basis, the landlord's consent to the proposed assignation was granted.

3.3.2 In September 2001, the minutes of the weekly Members Informal Meeting with the [REDACTED] indicate that there were issues surrounding the lease with Parkdean Holidays Limited although the nature of the issues is not evident. The minutes recorded that: *"issues raised by the Provost to be taken up with the Parkdean General Manager at the meeting on 8th October 2001."*

The minutes of the Members Informal Meeting of 8th October 2001 duly confirm that the meeting with the General Manager took place, with the [REDACTED] recording that: *"The development aspirations of Parkdean were noted and that they would put forward proposals over the next few months for development on the Maggot area in the knowledge that there could be significant public opposition to this. This would have implications on the current leasing arrangements which I will pursue with [REDACTED] at the appropriate time. In the meantime I will check if there are any implications for the leasing arrangements as a consequence of the shift from mobile to static caravans which has been requested."*

Comment

The references above to the "checking" of the lease should have provided an opportunity to identify that the rent increase, which was due from October 1999, had not been implemented.

3.4 Invoicing Processes

3.4.1 In view of the time period concerned, it has been difficult from the records available to establish the precise processes that were in place for raising the various debtor invoices relevant to the Common Good Fund, including those relating to the caravan park rent. Two officers who were responsible for raising invoices at different points in time were therefore asked to comment. The [REDACTED], who was in post from 1998 to 2002, commented that he received a schedule from his predecessor of the accounts to be raised. More recently, the [REDACTED], who was responsible for raising invoices from 2007, stated that she had received "a scrappy bit of paper" with the relevant details.

3.4.2 There is evidence of a breakdown in the procedures for raising accounts in the Common Good Fund Accounts for 2002/03 which were presented to the Nairnshire Committee in August 2003. The accounts showed income of £22,258 for rents of lands in comparison with the previous year's figure of £39,859 with the explanation that "*an invoice for £16,850 which should have been raised during the year was not issued until the current year.*" The invoice concerned related to the rental of the caravan park.

Comment

As highlighted in section 3.1 there was no automated system in place to manage the 7-yearly rent reviews. As a consequence, the system to control the raising of invoices relied on accurate paper-based records being maintained that were capable of withstanding the passage of time.

3.5 Common Good Fund Accounts

3.5.1 The Nairnshire Committee (up to the time Area Committees were dissolved in 2007) received a report on the Common Good Fund accounts in August each year. The accounts were presented by way of an income and expenditure account and balance sheet with a brief covering report from the [REDACTED]. With regard to the caravan park income, this was reported under the heading of "Rents of lands" along with other rents, though the caravan park on average accounted for approximately 90% of the total figure. The grounds maintenance costs (referred to at Section 3.2 above) were reported under the heading of "Maintenance of Common Good lands".

An examination of the various Common Good Fund accounts and accompanying reports show that there was little reference at Committee meetings to the relationship between the above income (rents of lands) and the expenditure (maintenance of Common Good lands) despite the earlier importance attached to this. For example, the accounts presented in respect of 2001/2002 showed a surplus of £14,062 between these two figures compared with a surplus of just £7,791 in respect of 2004/2005.

3.5.2 In August 2006, when the 2004/2005 Common Good Fund Accounts were presented to the Nairnshire Committee, one of the Members requested a more detailed account of the income and expenditure figures as a whole and requested details of what the "Rents of lands" included. The minutes show that "*the [REDACTED] advised that the majority of rental income was from Lochloy Holiday Park, garage stances etc. but undertook to submit a more detailed report to the next meeting of the Nairnshire Committee.*" However, the subsequent Committee minutes show that this report was not submitted.

- 3.5.3 Although there is evidence to show that Nairn Common Good Fund budgets were originally prepared soon after Local Government reorganisation in 1996, these weren't sustained and, instead, the only information presented to Members from approximately 2000 onwards was by way of the annual accounts.

Comment

- It is surprising that closer attention, by both officers and Members, was not given to the relationship between the "rents of lands" figure and the associated maintenance costs figure, particularly given that the surplus was clearly diminishing year on year. In this respect, given the significance of the caravan park income to the total income, it would have been expected that proper consideration would have been given to establishing the precise nature of the income source in terms of the specific lease conditions.
- Although there are infrequent references to Member scrutiny during the presentation of the Common Good Fund accounts, the specific request in August 2006 for details of the "rents of lands" income should also have prompted an examination of the lease conditions, again, in view of the significance of the sum concerned. Had that taken place, the rent review which was due a few months later in November 2006 would have been highlighted.
- The preparation of an annual budget in respect of the Common Good Fund would have provided an opportunity to properly consider the various income sources, including the terms of any associated leases.

3.6 Review of leases

- 3.6.1 In November 2003 there is evidence within an e-mail from an [REDACTED] to various officers, including the [REDACTED], that there were concerns regarding the performance of rent reviews. This was expressed as follows: *"We have had a couple of recent queries regarding the continuing existence (or otherwise) of a couple of leases. I attach a schedule giving details of the leases I can currently trace. I would be grateful if, from your own knowledge, you would advise me of those that effect your own Service you know still to be in existence and still being used or which have effectively now ended. I would be particularly grateful if the [REDACTED], when responding, would not only confirm which leases, from their records, are still in force or otherwise but would also advise what current rental is being recovered because I rather suspect that, in at least a few cases, we may not have implemented the provision of the lease for rent reviews."* Attached to the e-mail was an extract headed "list of Council leases for review" which contained 24 properties, though some of these were shown as "renounced or terminated." Included on the extract was reference to the caravan park lease which showed the initial rent and review periods as:

"£23,029 reviewable every 7 years by reference to the RPI." (Note: £23,029 refers to the rent which was charged prior to the previous rent review in November 1992).

- 3.6.2 In April 2004 the [REDACTED] issued a reminder to her previous e-mail of November 2003, stating: *"I refer to the earlier e-mail. This is one exercise I never finished before I left here. All I would say is that some of these leases are getting "whiskery" and I think that whoever follows on will have to give urgent consideration to some of these issues with you."*
- 3.6.3 A report was presented to the Nairnshire Committee of August 2005 by the [REDACTED] in which he detailed the background to the rental of Common Good "stances" and outlined the options to increase the annual rental charge, either by 2% (being the Council's inflation provision) or by 2.6% (being the rise in the Retail Price Index). The report referred to 11 stances, mainly garages, with all rentals being less than £100 per annum. In presenting the report the [REDACTED] also commented that *"all Common Good leases would be the subject of a report to a future meeting after the review had been carried out."*

3.6.4 Also in August 2005, there is evidence to show that a meeting was convened by the [REDACTED] to discuss the Common Good Fund. In addition to the [REDACTED], this was attended by the [REDACTED] and the [REDACTED].

Three of the actions arising from the meeting were captured as follows:

- *"Completion of a full asset register."*
- *"Current income to the Common Good Fund from each of the 15 assets." (Note: including the caravan park).*
- *"Where lease agreements exist, dates for the start of these lease agreements with any break in the lease agreement together with any review dates also need to be added."*

3.6.5 In September 2005, almost two years after the prompt from Corporate Services expressing concerns regarding the absence of rent reviews, the [REDACTED] e-mailed the [REDACTED] and [REDACTED] asking: *"Please find attached a list of assets I think belong to the Common Good Fund. I'd be grateful if you could have a look and see if this is accurate and let me know when the rents were last reviewed (if at all). The schedule, headed "Common Good Assets as at 1st April 2005" provided a list of 45 sites, with just 3 sites, including the caravan park, showing a rental in excess of £1,000 per annum and 37 sites showing rentals of less than £100 per annum. The schedule made reference to the caravan park as follows:*

"Annual rent: £33,700"

Although various entries on the schedule showed that the rentals would be increased by the RPI each year, there was no such reference to the rental in respect of the caravan park.

3.6.6 At a meeting in October 2005, a "draft asset register" (seemingly the schedule referred to in 3.6.4 above) was circulated by the [REDACTED] to the [REDACTED] and [REDACTED]. The minutes of this meeting show that *"each entry was discussed and various amendments were made."* Consequently a schedule entitled "Common Good Assets as at 30th September 2005" was produced. However, in respect of the caravan park, the entry remained unaltered with no reference made to the 7-yearly reviews as provided for by the lease. The minutes also record that *full details of all leases were required to confirm whether or not a rent review should take place or whether there were provisions for regular rent increases. It was also agreed that priority should be given to 11 of the assets.* (Note: the 11 "priority" assets were listed, including the caravan park).

3.6.7 It is evident that the work in revising the asset register was discussed with Members at the Members Informal Meeting on 10th October 2005. The minutes record that *"the draft asset register was circulated, including the name of the current tenant plus the current rent. In addition, it is stated that "the [REDACTED] suggested that he would bring a Committee report to the October Area Committee asking Members' approval to carry out a full audit of the current assets, including investigating alternative sources of funding to help meet the costs involved in preparing an up-to-date asset register."*

At the Nairnshire Committee on 25th October 2005 Members agreed to authorise the [REDACTED] to carry out a number of tasks with regard to the Common Good Fund. One of these related to the "use of assets" and was outlined as follows: *"An up to date view on the users of each of the Common Good assets is required. This will also allow an up to date picture to be gained for each of the assets by the various users. Once the condition of assets is known it will be possible to consider ways of making the assets work better for the Common Good. It will also be necessary to look at long term leases and commitments affecting the Common Good assets."*

3.6.8 Following up the action referred to in 3.6.6 above, namely to focus on 11 of the Common Good assets, the [REDACTED] emailed the [REDACTED] and the [REDACTED] in January 2006 confirming that *"I think I have found most of what I was asked to research and I am preparing a written note regarding the various lease agreements."* The note shows just 10 Common Good assets were listed with no reference to the caravan park.

Comment

- Given the attention that was given to rental income between November 2003 and January 2006 it is remarkable that the various officers involved didn't manage to properly identify the terms of the caravan park lease and detect that a rent increase should have been imposed in 1999 and a further increase was due in 2006.
- The initial concern that *"we may not have implemented the provision of the lease for rent reviews"* was expressed by a relatively junior officer ([REDACTED]) who accurately identified that the caravan park rental should be reviewed every 7 years in accordance with the lease. When the exercise was taken forward by senior officers from various Services this was somehow totally lost sight of and a simple check of the information originally provided was omitted.
- The exercise as a whole completely lacked focus, not just ignoring the original source information from the [REDACTED] but also ignoring the materiality resulting in leases being considered where the rental was largely insignificant. Only 3 leases exceeded £1,000 per annum, and it has to be questioned why the exercise didn't initially look at these.

3.7 Internal Audit review 2008 and follow up review 2011

3.7.1 In May 2008 a final Internal Audit report was issued on the subject of "Common Good Funds," with a draft report issued five months earlier in December 2007. An extract from a section of the report (Section 5.7: Schedule for Common Good income) is provided below in italics:

Finding

There is no overall schedule detailing all Common Good income to be collected. For the Common Good Funds outwith Inverness reliance is placed upon local records and administrative arrangements to ensure that income is collected in line with agreed leases. Some of the local administrative arrangements to collect Common Good income are still in the process of being defined following the recent reorganisation of the operational Areas. There is a risk therefore that Common Good Funds may not benefit from the potential income due.

Recommendation

For their areas of responsibility [REDACTED] should establish a schedule detailing all the sources of Common Good income, the amounts due and when they should be collected. The schedule should record information on when rent reviews are due and when leases are due to terminate. This schedule should be used to support monitoring that all income due is invoiced timeously.

Agreed Action

Schedule of income to be developed and arrangements agreed to ensure income is collected

Responsible Officer/ Date

[REDACTED]

The action date provided a timescale of one year to implement the action from the point that the weakness was identified in the draft report of December 2007.

- 3.7.2 Progress against the above audit report was reported to the Resources Committee in June 2009 by the [REDACTED]. This informed Members that a cross-Service Project Group had been established to take forward the recommendations outlined in the Action Plan. With regard to the action to develop a schedule of income, progress was reported as follows:

Action: All income streams in the first instance to be identified and then the property related to these income streams to be recorded as part of the new Asset Register.

Progress: The CGF Project Team has still to complete this piece of work.

Appended to the report was a schedule relating to the individual Common Good Funds. In respect of Nairn, the Schedule stated: *"The main rental income comes from the Caravan Site, which in turn pays for the maintenance of Common Good lands."*

The Resources Committee noted the report and agreed that a further report would be presented to Members at the meeting of the Committee in December 2009 showing how the action points were being progressed.

- 3.7.3 An e-mail of September 2009 from the [REDACTED] shows that he met with Members in order to get their views on the local aspects of the report submitted to the Resources Committee in June. At a similar time to when this meeting took place there is a copy of a presentation on file showing that the Common Good Fund's main assets was the caravan site land and that the main income was the rental of £33,700 per annum.

- 3.7.4 The Resources Committee were provided with a progress report on the Common Good Fund Action Plan as agreed at the earlier meeting in June. However, although the report referred to a revised Common Good Fund Policy which was one of the report's key actions, there was no reference as to how the schedule of income was being progressed. The Common Good Fund Policy was appended to the report but made no reference to income.

- 3.7.5 In June 2010 the [REDACTED] submitted a further report to the Resources Committee which brought together the documents in relation to the Common Good Fund Policy. The Members agreed amendments to the Policy which were set out in the report including an additional section headed "Maintenance of the Common Good Asset Register/Records." This section states that *"Rental/lease income, which is derived from Common Good Fund investment properties is monitored and administered by the Housing and Property Service."*

- 3.7.6 An Internal Audit follow up report in respect of Common Good Funds was issued in November 2011. With regard to the collection of income, the following extract is provided in italics:

Previous Area of Concern

"There is no overall schedule detailing all Common Good income to be collected. For the Common Good Funds outwith Inverness reliance is placed upon local records and administrative arrangements to ensure that income is collected in line with agreed leases. Some of the local administrative arrangements to collect Common Good income are still in the process of being defined following the recent reorganisation of the operational Areas."

Previous Management Agreed Action

Schedule of Income to be developed and arrangements agreed to ensure income is collected.

Current Finding

Although there is a record which records and maintains details of income derived from investment property held by the Inverness Common Good Fund, there are no formal records in place to record income from Common Good Fund property and land assets held outwith Inverness.

It is intended that the details relating to property and land rents/leases held outwith Inverness will be extracted from the Common Good Fund Asset Register and this will be used as a tool for completeness of income.

Recommendation

A Common Good Fund income register should be established; similar to what happens with Inverness Common Good Fund, to detail all sources of income, the amounts due and when they should be collected. The schedule should record information on when rent reviews are due and when leases are due to terminate. This schedule should be used to monitor that all income due is invoiced and bad debts are pursued timeously.

Management Agreed Action

The cross-Service Project Group will draft a report showing how this could be delivered. It must be balanced against the ability of the relevant Common Good Fund to pay for such a service, bearing in mind that the detail received in Inverness costs a considerable sum to deliver

Responsible Officer/Date

[REDACTED]

In view of the fact that the failure to correctly identify the terms of the caravan park income didn't come to light until 2013 it must be assumed that the above action was not actually implemented as agreed.

Comment

The Internal Audit report of 2008 and the follow up report of 2011 both reported a significant weakness in income collection arrangements and highlighted the risk that "Common Good Funds may not benefit from the potential income due." However, the audit report recommendations were not effectively actioned in that respect.

3.8 Effect of significant change

3.8.1 It is appropriate to highlight finally that the period covered by this investigation has covered various periods of significant change including:

- Local government reorganisation in 1996.
- Restructuring of the Finance Service in 2002, including Area responsibilities.
- Dissolution of the Area Committees in 2007.

Comment

The above changes are significant and, in the absence of robust systems, rely on accurate information being passed on in a format understood by the recipient. The changes also rely on the roles and responsibilities of the various Services being clearly understood. Other staff changes which took place during the period concerned will also have been significant and one such example is provided in section 3.6.3 above whereby an [REDACTED], who was aware of the nature of the rental issues as well as the precise nature of the caravan park lease, left her post in 2004.

4. CONCLUSIONS

In terms of the opinion requested from this review referred to at section 1.2:

- (i) The various documents examined clearly indicate negligence by officers in failing to implement the agreed rent reviews. Although the terms of the lease agreement entered into by Nairn District Council in 1985 were difficult to administer from a system perspective, with regard to the 7-yearly reviews, there have been many trigger points which should have prompted the precise terms of the lease to be identified.

A key trigger point occurred in November 2003 when an [REDACTED] identified that rent reviews may not have been implemented in accordance with the signed leases. At that point the caravan park rent was correctly identified as being subject to 7-yearly reviews in terms of the lease. However, that information was lost sight of by officers who were subsequently tasked with undertaking a review of the leases in place. The review progressed with little focus and failed to consider materiality. Ultimately it reached a conclusion that failed to reveal the actual lease conditions. In essence, the exercise concerned was not a significant task but nevertheless was prolonged and ineffective. Although Members were informed of the review and were presented with some of its output, it would appear that more could have been done to question how this process was taken forward.

Given that the caravan park rental is such a significant proportion of the Common Good Fund income, a key question posed from this investigation is why did officers not consider when the rent would be reviewed? Were they of the opinion that the rent would remain static for its full term of 99 years? Did they not consider that the surplus between the grounds maintenance costs and the caravan park income was constantly diminishing and therefore look into forecasting the point at which the costs of grounds maintenance would exceed the income received? In this respect, the preparation of an annual budget for the Nairn Common Good Fund would have assisted in highlighting the projected rent income in detail. In addition to the officer role, Members also had a role in scrutinising and challenging the information provided. However, this report has highlighted one example of when a key question asked by a Member in 2006 did not appear to be answered.

The Internal Audit report of May 2008 provided an opportunity for officers to address the weaknesses regarding rental income. Had appropriate action been taken at that time this would have substantially reduced the amount of the "loss" identified recently.

- (ii) With regard to liability, it is concluded that this is attributable to the many failings of officers at various points in time as referred to within this report. Although Members had a scrutiny role it is not concluded that this has contributed with any significance to the loss of income.
- (iii) In conclusion, in view of the maladministration at the hands of the various officers involved it is competent to reimburse the Common Good Fund for the actual "loss" incurred, totalling £187,060.

Finally, it is critical to ensure that the assurances regarding the improvement of governance measures that have been provided in the report to the Nairn and Badenoch & Strathspey Committee of 11th June 2014 are delivered. Similar assurances were provided following the Internal Audit report of May 2008 which were subsequently reported in the press. In view of the current position regarding the Nairn caravan park rent, it is now apparent that the measures taken were clearly ineffective and this has therefore exposed the Council to additional reputational damage.